

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 480 OF 2006.

Jayram S. Salve (P.I.)
For CBI, ACB, Mumbai
Tanna House, 11-A, Nathalal
Parekh Marg, Coloba,
Mumbai-400039

..Applicant

V/s

1. Shri G.G. A. Naidu
Shrinivas Nilayam,
Megality House, No. 178,
Gandhinagar, New Behram
Hydrabad-500080

2. State of Maharashtra

..Respondents.

Mr. J.C. Satpute, Sr. Advocate for the applicant.
Mr. G.G. A. Naidu, Respondent No.1 in-person.
Mrs. M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 19TH APRIL, 2007.

JUDGMENT.

. This revision application is filed on behalf of the CBI against the order dated 9/6/2006, passed by the Special Judge for CBI, Mumbai in Misc. Application No. 141/2005 in Special Case No. 4 of 1981 discharging the accused/respondent No.1 on the ground that the sanction for the prosecution was not accorded by the competent authority.

2. The case in brief is that the accused/respondent No.1 was appointed as Income Tax Officer, Class II (Group B) by the Commissioner of Income Tax, West Bengal on 3rd August, 1956. Thereafter he was posted at different places. When he was working as such at Nagpur, the prosecution was launched against him under section 5(1)(e) and 5(2) of the Prevention of Corruption Act, 1947. The investigation was made and the complaint was lodged by CBI in Mumbai. At the request of the respondent the case was transferred to Special Judge at Nagpur. He challenged the prosecution on various grounds, including the validity of the sanction. By order dated 24/11/1980, the Special Judge, Nagpur had discharged the accused, inter-alia, on the ground of non application of mind by the Sanctioning authority, who was the Commissioner of Income Tax. But in the said order at the same time, he had given liberty to CBI to prosecute the respondent No.1 after obtaining proper sanction. Thereafter, the CBI obtained fresh sanction order dated 17/1/1981, which was issued by the Under Secretary to the Government of India, by the order and in the name of President of India. The sanction order was issued under section 6(1)(c) of the Prevention of

Corruption Act, 1947. After obtaining the sanction, fresh case was filed by CBI before the Special Judge at Bombay. The respondent again challenged the sanction order on various grounds, one of the grounds was that the Central Government was not competent to issue sanction but it was Commissioner of Income Tax, who was the appointing and removing authority of respondent No.1. The Special Judge, Greater Bombay allowed the parties to lead evidence and accordingly, evidence of K.G. Goel, Under Secretary to the Government of India was recorded, as he was the person under whose signature the sanction order was issued. Thereafter, the respondent filed Writ Petition NO.991/1993 before this Court for discharge on several grounds. That Writ petition came to be disposed of by the learned Single Judge of this Court on 10/6/2002, by observing that the preliminary points or the objections raised by the respondent No.1, who was the petitioner in that case, demanded adjudication by the trial Court. The learned Single Judge also observed that on behalf of the prosecution one witness was already examined and the trial Court could recall that witness, if so needed in the interest of justice. After that the learned Special Judge dismissed the application of the respondent for

discharge by order dated 10/6/2004. That order was challenged in Criminal Writ Petition NO. 1773/2004 by the respondent No.1. While allowing that petition, by order dated 29th November, 2004, the Division Bench of this Court set aside the order of the Special Judge dated 10/6/2004 and directed the special Judge to consider and give finding on the points of validity of sanction raised by the present respondent No.1, before proceeding with the trial. Since the trial was already delayed, the Special Judge was also directed to give findings on the said point in the light of evidence led by the sanctioning authority and the rules in that behalf expeditiously. In view of the said order the learned Special Judge heard the parties again and passed impugned order dated 9/6/2006 allowing the application of the respondent and discharged him holding that the Central Government, being not the appointing authority, is not competent to accord the sanction.

3. There is no dispute that respondent No.1 was Income Tax Officer, Class II and it is a Group B service under Central Government. After the earlier sanction was found to be invalid on the ground of non application of mind by the Commissioner of Income Tax, who was the

sanctioning authority, the CBI approached the Ministry of Home Affairs, Department of Personnel in the Government of India, for sanction and the sanction order dated 17/1/1981 was issued by the Government of India Ministry of Home Affairs, Department of Personnel and the said order was purported to have been issued by the order and in the name of President of India. It was signed and authenticated by K.G. Goel, Under Secretary to the Government of India in the Department of Personnel. The order clearly shows that the sanction was accorded by the Central Government under Section 6(1)(c) of the Prevention of Corruption Act, 1947.

4. Admittedly, for the post of Income Tax Group B, appointing authority is a Commissioner of Income Tax and a person, holding a post in Group B, can be removed or dismissed from the service either by Commissioner of Income Tax or Director of Inspection, as per entry No. 17 in Part II of schedule with the Central Civil Services (Classification, control and Appeal) Rules 1965, (Rules for sake of brevity). It is the contention of the respondent No.1 /accused that as his case would not fall under section 6(1)(a)(b) and as his case would fall under section 6(1)(c) of the Prevention of

Corruption Act, the sanction could be accorded by the authority, who was competent to remove him from service and therefore, the sanction for his prosecution could be accorded either by the Commissioner of Income Tax or Director of Inspection. He further contended that as these powers are specially vested only in the Commissioner of Income Tax or Director of Inspection, no other authority nor even the President of India or the Central Government could accord sanction for his prosecution under section 6(1)(c). He further contended that in view of the Article 53 of the Constitution of Indian, even though the executive powers of the Union are vested in the President, in view of clause 3 of Article 53 of Constitution, the powers and functions vested in any other authority shall not be deemed to have been transferred to the President of India. According to him when the power to accord sanction is vested in Commissioner of Income Tax or the Director of Inspection in respect of Income Tax services Group B, the President and thereby the Central Government, could not exercise those powers. He also contended that the sanction order is not authenticated by the proper officer. He also contended that there was no application of mind, before according the sanction.

5. Mr. Satpute, learned Counsel for the applicant vehemently contested all these arguments advanced by the respondent/accused before the Special Judge, as well as before this Court. He contended that as per the Rules framed by the President, the Under Secretary is competent to authenticate the orders issued by and in the name of President of India. He contended that Article 53 clause (3) has been misinterpreted, while challenging the powers of President. Further he contended that the Commissioner of Income Tax or Director of Inspection are the officers subordinate to the Central Government. According to him, under Article 311 of the Constitution of India no person can be removed from service by the authority lesser in rank than the appointing authority but there is no bar to dismissal or removal of service by the authority superior to the appointing authority. Mr. Satpute also contended that even though under the Service Rules the appointing authority is competent to dismiss or remove a Government servant, the President of India has overriding powers to dismiss or remove any government servant working under the Union of India. According to him, in view of this, the learned Special Judge

misdirected himself about Constitution and legal provisions and committed serious error in holding that the Central Government is not competent authority to accord sanction.

6. It is admitted fact that the respondent accused was holding a post of Income Tax Officer Group B, when the prosecution was launched and in view of entry 17 in Part II of the Schedule to the Rules, the Commissioner of Income Tax is appointing authority and he could be dismissed or removed from the service either by the appointing authority i.e. Commissioner of Income Tax or by the Director of Inspection. Admittedly, he was not a person who could not be removed from service except by the order of the Central Government.

7. Section 6 of the Prevention of Corruption Act, 1947 reads as follows:-

" No Court shall take cognizance of an offence punishable under Section 161 or section 164 or Section 165 of the Indian Penal Code (45 of 1960) or under Sub-section (2) or sub-section (3-A) of sec. 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by the Government or authority, which could have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

In view of this, no Court shall take cognizance of the offence punishable under the Prevention of Corruption Act except with the previous sanction of the authority competent to remove such employee from his office. Admittedly, though the present applicant was in the service of Union of India, he was not removable from his office save and except by or with the sanction of the Central Government only. He could be dismissed or removed by the Income Tax Commissioner, who is subordinate or inferior to the Central Government. It

is also admitted that the sanction in the present case was accorded under section section 6(1)(c) and not under section 6(1)(a).

8. The question is whether the Central Government could accord such sanction under Section 6(1)(c) when the appointing authority and the authority competent to remove the respondent accused from his office was the Income Tax Commissioner. Clause (1) of Article 311 of the Constitution of India Reads as follows:-

"No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

Clause (1) of the Article 311 indicates that no person who is member of Civil Service under the Union or under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed. From this it is clear that the respondent No.1., who was holding a civil post in the Income Tax office under the Union of India could not be dismissed or removed from his office by the authority subordinate to the Commissioner of Income Tax, who was the appointing

authority in his case. It is now well settled that the authority subordinate to the appointing authority cannot dismiss or remove a person holding civil post under the Union or State Government but he can be dismissed or removed either by the appointing Authority or by the authority who is superior to the appointing authority. Therefore, the authority who is superior to the appointing authority can also accord sanction for prosecution under section 6(1)(c) of Prevention of Corruption Act.

9. In **Sampuran Singh V. State of Punjab, AIR 1982 S.C. Cr. L.J. 1973** As Sectional Officer (Overseer) in Punjab Public Works Department (irrigation Branch) of the Punjab State was prosecuted under the Prevention of Corruption Act, 1947. The Chief Engineer of the Department was the appointing authority and he was also competent to dismiss or remove him from service. As such he could accord sanction under section 6(1)(c) for the prosecution. However, in that case, the Chief Minister, who was also holding portfolio of Minister of Irrigation, accorded sanction under section 6(1)(c) for his prosecution. The question before the Supreme Court was whether the Chief Minister was competent to accord

the sanction. Their Lordships observed as follows in para 22 and 23 :-

" 22- In the present case we are called upon to decide the question whether the authority according sanction was competent to do so within the meaning of S. 6(1) (c) of the Prevention of Corruption Act. S. 6(1)(c) contemplates that the sanctioning authority must be competent to remove the person from his office. Rule 8 of the Punjab Public Works Department (Irrigation Branch) Overseers Engineering State Service, Class III, Rules 1955, however, provides that the appointing authority of the Sectional Officer is the Chief Engineer. Therefore, removing authority could not be inferior or subordinate in rank to the Chief Engineer in view of Article 311(1) of the Constitution. The Chief Minister concerned is not inferior or subordinate to the Chief Engineer. Art. 311(1) of the Constitution enjoins that no person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Under this Article the authority to remove should not be subordinate to that by which he was appointed. That does not mean that the power cannot be exercised by an authority higher than the appointing one."

" 23 The true legal position is clarified in the following decision in **Mahesh Prasad V. State of U.P., (1995) I SCR 965: (AIR 1955 SC 70)** this Court held :

In view of Article 311 (1) of the Constitution of India and Rule 1705 (c) of the Indian Railway Establishment Code, Volume I (1951) Edition) a sanction under section 6(c) of the Prevention of Corruption Act, 1947 (as it existed prior August, 12, 1952) may be given either by the

very authority who appointed the public servant or by an authority who is directly superior to such appointing authority in the same department. But such sanction is also legal if it is given by an authority who is equal in rank or grade with the appointing authority. Sanction is invalid, if it is given by one who is subordinate to or lower than the appointing authority"

10. Again a similar question arose before the Supreme Court in **State of Tamil Nadu V. Thulasingham and others, 1995 CRI.L.J. 2080**. In that case, the Municipal Council was superseded and a Special Officer was appointed by the Government. Some members of Municipal Council were prosecuted under the Prevention of Corruption Act. The sanction for prosecution was accorded by the State Government. The sanction was challenged by the accused persons on several grounds. However, the special Judge rejected the said challenge but the Criminal Appeals filed by the accused were allowed by the Madras High Court. Besides other grounds, one of the ground for allowing the appeal was that sanction for prosecution could be accorded only by the Special Officer appointed by the Corporation and not by the State Government. That order was challenged by the State of Tamil Nadu. Their Lordships of the Supreme Court observed as follows in para 75:-

"The last finding of the High Court in reversing the decision of the trial so far as it upheld the sanction for prosecution of the employees is again erroneous. The High Court was in error in its view that only the special officer appointed by the Corporation, when it was superseded, was competent to grant the sanction. It will be noticed that here the sanction had been given by the superior authority, namely the Government itself which appointed the special Officer. Once the sanction is granted by the superior authority it does not get invalidated. It could be invalid if the sanction had been granted by the authority subordinate to the authority who had to grant the sanction and in that case would have been subject to challenge. We thus find that the trial court was right in holding that the sanction was validly granted by the competent authority."

Thus, now it is well settled that if the sanction is by the authority superior to the authority who is competent to remove or dismiss a Government Servant from service, it cannot be invalid.

11. It appears that the attention of the learned Special Judge was not drawn to the provisions of Rule 12 of Rules. Sub-rule (1) and (2) are relevant, which read as follows:-

"12(1).- The president may impose any of the penalties specified in Rule 11 on any Government servant."

"(2).-Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on -

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf."

12. Sub-Rule (1) makes it clear unequivocally that the President may impose any of the penalty specified in Rule 11 on any of the Government servant. Without prejudice to the powers of the President, the appointing authority or the authority specified in the schedule is also competent to impose the penalties on the members of the Central service. There is no doubt that the present applicant, being an officer in Income Tax Services Group B, was a member of the Central Services. Rule 11 provides for different penalties which may be imposed on a Government servant. The Penalties (i), (ii), (iii) and (iv) are minor penalties and penalties (v), (vi), (vii), (viii), and (ix) are major penalties. The

schedule describes the services, their appointing authorities and the authorities, who are competent to impose penalties under Rule 11. As per entry 17, while Assistant Commissioner can impose the penalties of censure only on government servant, the Commissioner of Income Tax, being appointing authority and also the Director of Inspection, being the authority specified in the schedule, can impose all penalties including the penalty of removal or dismissal of a person who is member of Income Tax service Group B. Thus, from this it will be clear that while the respondent No.1 accused could also be dismissed or removed from service by the appointing authority or by the authority specified in Entry 17 of the Schedule by virtue of sub-rule (2) to Rule 12, the powers to impose any penalties specified in Rule 11 on any Central government servant are reserved with the President of India. From this, it is clear that the President of India may impose the penalties of removal or dismissal of service on the present respondent/accused under sub-rule (1) of Rule 12, while the appointing authority and authorities specified in Entry No.17 could also remove him under sub-rule (2) of Rule 12. The President of India, being the authority superior to the Commissioner of Income Tax or the

Director of Inspection, could certainly accord sanction for prosecution under section (6)(1)(c) of the Prevention of Corruption Act.

13. The learned Special Judge accepted the contention of the respondent/accused that in view of clause 3 of Article 53 of the Constitution the function of giving sanction was conferred on the Commissioner of Income Tax and therefore the Central Government in the name of President could not exercise the said function. Article 53 of the Constitution of India reads as follows:-

"Article 53 (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provisions, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall-

(b) be deemed to transfer to the president any functions conferred by any existing law on the Government of any State or other authority; or

(b) Prevent Parliament from conferring by law functions on authorities other than the President."

If Clause (3) is carefully read, it would be clear that under sub clause (a) any functions conferred by any existing law on the government of any State or any other authority shall not be deemed to have been transferred to the President and under sub-clause (b) the Parliament may confer any such functions on authorities than the President by making a law. The learned Special Judge appears to have misunderstood this provision of the Constitution. It appears that in view of the Entry 17 part II of the Schedule to the Rules and Section 6(1)(c) of the Prevention of the Corruption Act, the learned Special Judge felt that the Commissioner of Income Tax, being the appointing authority, the power or function of imposing penalties of removal or dismissal was conferred on vested in him and therefore he was the authority, who alone could accord sanction and therefore, this function of the Commissioner of Income tax could not be transferred to the President of India by virtue of Article 53(3) of the Constitution. In fact this was completely erroneous interpretation. Executive powers of the Union, including the powers of appointment and removal or dismissal from services, are vested in the President of India, though for the sake of effective

administration some of the powers are delegated to different authorities or officers working under the Union of India and this is clear from Rule 12 of the Central Civil Services (Classification, control and Appeals) 1965, that the President of India may impose any of the penalties specified in Rule 11 on any Government Servant and these powers are also conferred either on the appointing authority or on the authorities specified in part II of the schedule to the said Rule. The question of transfer of the powers of Commissioner of Income Tax or Director of Inspection to the President would not arise, because these powers are basically vested in the President of India and for the sake of convenience and efficient administration they are also delegated to the authorities subordinate to the President. The respondent/accused could not point out any law whereby the powers of appointment or removal or dismissal from service have been taken away from the president of India by any law made by the Parliament or by any other existing law.

14. While the Special Judge did not deal with the question of authentication of the sanction order, the respondent vehemently argued before this Court that K.G.

Goel, Under Secretary to the Government of India, was not competent to authenticate the said order which powers to have been issued by order and in the name of President of India. However, there appears no substance in this contention also in view of the Authentication (orders and other Instruments) Rules, 1958 made by the President on 25th October, 1958 and notified by the Ministry of Home Affairs on 3rd November, 1958. As per Rule 2, the orders and other Instruments made and executed in the name of President shall be authenticated by the signature of the Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India and by different other officers from the different departments. As explained by K.G. Goel, who was examined before the Special Court, the order according sanction for prosecution is issued by Department of Personnel of Ministry of Home Affairs under the Government of India and he, being the Under Secretary in that department, had authenticated the order which was passed by the Home Minister, having authority to pass such order under the Business Rules of the Union of India.

15. In view of of the legal position and the circumstances noted above, I find that the learned Special Judge committed error in passing the impugned order discharging the accused/respondent No.1 on the ground that the sanction to prosecute was not accorded by the competent authority. The impugned order cannot be sustained and is liable to be set aside.

16. The Revision Application is allowed. The impugned order discharging respondent No.1 /accused is hereby set aside. The matter is remanded back to the Special Judge to proceed with the matter as per law.

17. At this stage the respondent no.1 makes a request that he may be given reasonable time to approach the Supreme Court. Time granted till 23rd July, 2007. Till then the trial Court shall not proceed further.

(J.H. BHATIA, J.)

